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(1958) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Appeal No. 38 of 1952

Gadiraju Sanyasi Raju — APPELLANT

Vs

Kandula Kamappadu and Others — RESPONDENT

Date of Decision : 26-06-1958

Acts Referred:
Registration Act, 1908 — Section 2(7), 49
Specific Relief Act, 1877 — Section 12, 27A
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1960 AP 83

Hon'ble Judges : Chandra Reddy, C.J;Munikannaiah, J;Kumarayya, J

Bench : Full Bench

Advocate : S. Ramamurti, for the Appellant; P. Somasundaram and P. Suryanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—One of the important questions to be decided in this appeal is whether the agreement Ex. A-6 is a ''lease'' falling within the ambit of Section 17(1) (d) and, therefore, comes within the mischief of Section 49 of the Indian Registration Act. The Act defines a lease as including an agreement to lease.

2. The Privy Council decision in Hemanta Kumari Debi v. Midhapur Zamindari Co. ILR Cal 485: AIR 1919 PC 79 dealt with the meaning of the phrase ''agreement to lease'' and their Lordships made the following observations :

"..... the Registration Act of 1908 provides that ''lease'' includes an agreement to lease, and by Section 17 enacts that leases must be registered, the penalty for non-registration being imposed by Section 49, which provides that if not registered, no document shall affect Immovable property which it comprises or be received as evidence of any transaction affecting such property. If the document in question can be regarded as a lease within the meaning of this definition it could not be received in evidence. Then Lordships are of Opinion that it cannot be so regarded. An ''agreement for a lease'', which a lease is by the

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statute declared to include, must, in their Lordships'' opinion, be a document which effects an actual demise and operates as a lease."

3. Their Lordships were, in that case, dealing with an agreement which was not enforceable on the date when it was entered into but which could become enforceable only in case a certain event happened. Before that decision was rendered, a Full Bench of the Madras High Court had in Narayanan Chetty v. Muthiah Servai ILR Mad 63 ruled that an agreement to execute a sub-lease and to get it registered at a future date is a lease wtthin Section 3 of the Indian Registration Act III 06 1887 and is compulsorily registerable under Clause (d) of Section 17. Some time after the case in ILR Cal 485 : AIR 1919 PC 79 was decided, a similar question came up for consideration before the Madras High Court in Swaminatha Mudaliar v. Ramaswami. Mudaliar ILR 44 Mad 399 : AIR 1931 Mad 72. Referring to the observations of the Privy Council in ILR 47 Cal 485 : AIR 1919 PC 79 one of the learned Judges remarked as follows, after quoting the passage above extracted from the decision.

"Turning to Panchanan Bose v. Chandi Charan Misra ILR Cal 808 we see that the Chief Justice held that the document he was considering did not come within Section 17(1) (d) of the Registration Act and that consequently it was affected by rule contained in Clause 2 (5). In fact, the conclusion was that unless an agreement to lease had the effect of operating as an immediate demise of the property it need not be registered. It may be urged that this view practically destroys the difference between a lease and an agreement to lease, but apparently the position created by the definition section has become very anomalous and Courts have been at pains to devise a way out of the difficulty; and as the solution has emanated from such a high authority as Sir Lawrence Jenkins and has the approval of the Judicial Committee, I feel that we should accept it unreservedly.

I am DOG prepared to regard the pronouncement of the Judicial Committee as an Obiter Dictum which it is open to us to ignore, having regard to the Full Bench decision of this Court, The question was directly before the Board and they pointedly drew attention to the decision of the Chief Justice of the Calcutta High Court on the matter. I feel no compunction in respectfully accepting this view, and in holding that ILR 35 Mad 63 (FB), should no longer be regarded as good law; otherwise it would result in perjured evidence being let in to prove a supposition oral agreement in such cases."

4. The other learned Judge, Wallis C. J., however, seemed lib opine that the Court was still bound by the decision in ILR 35 Mad 63 (FB).

5. No subsequent derision binding upon us throwing light upon the meaning of the passage cited above from the Privy Council decision has been brought to our notice. We find considerable difficulty in applying the observations of their Lordships to the instrument before us. We. therefore think it desirable that the following question should be decided by a Full Bench :

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"Whether Ex. A-6 is a lease within the meaning of Section 17 (1) (d) of the Registration Act?"

The papers will be placed before the learned Chief Justice for the constitution of a Full Bench to decide the question.

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